SUPREME COURT, U.S.
FEB 14 1972
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1036

In the Matter of the Application of
EDWARD LECCI, individually and as President of the Nassau County Patrolmen's Benevolent Association,
Petitioners,

— against —

ADELE LEONARD, executive directrix of the Civil Service Commission, and the Civil Service Commission and FRANCIS B. LOONEY, Commissioner of Police and the Nassau County Police Department,
Respondents

Petition for a Writ of Certiorari to the Court of Appeals for the State of New York

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Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals for the State of New York entered on November 17, 1971.

Citations to Opinion Below

The opinion of Special Term Supreme Court, Nassau County, State of New York dismissing Petitioner's complaint is printed in Appendix C. The Appellate Division of the Supreme Court unanimously affirmed the findings of Special Term without opinion, the text of which as reported at 325, N.Y.S. 2d 622 (1971) is printed in Appendix B.

The opinion of the Court of Appeals of the State of New York denying Petitioner's motion for leave to appeal is printed in Appendix A and as yet has not been reported in the official reports.

Jurisdiction

The judgment of the Court of Appeals was entered on November 17, 1971. The Court of Appeals by its action denied Petitioner's motion for leave to appeal thereby exhausting Petitioner's state remedies.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

The Question Presented

Whether the regulation imposing two years of college as a requirement for promotion may be applied retroactively.

Constitutional Provisions, Statutes, Rules, etc., Involved

The constitutional provision involved is the due process clause of the fifth amendment to the United States Constitution as it applies to property and as made applicable to the states through the fourteenth amendment; resolutions 41 and 435 of the Nassau County Civil Service Commission; and Nassau County Police Department Order 371. The above named amendment, resolutions and order are printed in Appendix D.

Statement

Francis B. Looney at all times hereinafter mentioned was the duly appointed Commissioner of Police for the Police Department, County of Nassau and as such was responsible for making and promulgating rules with regard to educational requirements for promotion. That pursuant to his authority, Francis B. Looney promulgated teletype order 371 dated December 30, 1969 and which is set forth in Appendix D. Said order 371 is binding and mandatory upon the members of the Nassau County Police Department. Order 371 sets forth requirements for promotion applicable to every Nassau County Police Officer, to wit, that effective January 1, 1973, a minimum educational requirement of two years of college will be required for admission to the examination for Captain in the Nassau County Police Department; and effective January 1, 1974, a minimum educational requirement of two years of college will be required for the admission to the examination for Police Lieutenant and Police Sergeant in the Nassau County Police Department.

That at all times hereinafter mentioned Adele Leonard was the duly appointed executive director of the Civil Service Commission, County of Nassau, and as such was responsible for making the rulings with regard to educational requirements for promotion within Civil Service. That pursuant to her statutory authority, Adele Leonard promulgated Resolutions 41 and 435 which are set forth in Appendix D and which are identical to the directives set forth in Francis B. Looney's teletype order 371, referred to above.

Petitioner commenced an Article 78 proceeding pursuant to the Civil Practice Law and Rules of the State of New York, to annul said resolutions promulgated by the Nassau County Civil Service Commission (Resolutions 41 and 435) and the order of the Nassau County

Police Department (Order No. 371) which set a minimum educational requirement of two years of college as a prerequisite for taking the above-mentioned promotional examinations. In particular, the preceeding attacked the applicability of said Order and Regulations to members of the Police Department who were employed prior to the adoption of said Order and Regulations.

Special Term, Supreme Court, Nassau County, State of New York, dismissed Petitioner's complaint (Appendix C), the Appellate Division of said Supreme Court, unanimously affirmed the findings of Special Term (Appendix B), and the Court of Appeals denied Petitioner's motion for leave to appeal thereto (Appendix A), thereby exhausting Petitioner's state remedies.

Basis for Granting the Writ

This Petition raises substantial and important questions concerning the rights of an individual recognized and protected by the Fifth Amendment to the United States Constitution, to wit, the right not to be deprived of property without due process of law. In effect, Respondents are attempting to deprive Petitioner of proprietary rights, to wit their right to advance within the Police Department of the County of Nassau, by requiring that all members of the Nassau County Police Department prior to being admitted to take a Civil Service examination for elevation to the rank of Captain, Lieutenant or Sergeant, must meet a two year college educational requirement. By having the requirement applicable to members of the Nassau County Police Department who were on the force prior to its adoption, there results a deprivation of said members' proprietary rights and interests as well as creating an undue hardship upon said members which is unjust and oppressive in nature. As a practical matter, a member who

began serving in the Nassau County Police Department prior to the enactment of resolutions 41 and 435 of the Nassau County Civil Service Commission and Nassau County Police Department order 371, is barred from advancement. It should not be overlooked by the court that a duty schedule for a police officer covers a seven day week and a twenty-four hour day making the attendance at college, in many instances, a practical impossibility. In addition, family responsibilities in many cases dictate the inability of a member of the Nassau County Police Department to obtain the necessary college credits to seek advancement.

By Respondents acts, the terms and conditions of employment as to those police officers who had joined the Nassau County Police Department, prior to the adoption of Resolutions 41 and 435 of the Nassau County Civil Service Commission and Order 371 of the Nassau County Police Department have been arbitrarily altered. Retroactive enactments that create undue influence or hardship and which create a liability in relation to a transaction as to which no liability previously had attached, as is the case here, are so arbitrary, harsh and oppressive as to be regarded as invalid (*Application of Baily, et al.* 37 N.Y.S.2d 275 (1942); *Hayman v. Morris*, 37 N.Y.S.2d 881 (1942).

CONCLUSION

For the reasons stated above, Petitioners respectfully submit that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Order Denying Motion for Leave to Appeal

STATE OF NEW YORK,
IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Seventeenth day of November A.D. 1971.

Present, HON. STANLEY H. FULD, *Chief Judge, presiding*

(Same Title)

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied.

(Seal) a copy

GEORGE KIMBALL
Deputy Clerk

Opinion of Appellate Devision
Second Department

In the Matter of Edward LECCI, etc., Appellant, v. Adele LEONARD, etc., et al., Respondents.

Supreme Court, Appellate Division, Second Department. Sept 27, 1971. Richard Hartman, Mineola, for petitioner-appellant. Joseph Jaspan, County Atty. of Nassau County, Mineola, for respondents-respondents; Benedict F. Romano, Deputy County Atty., of counsel. Judgment of the Supreme Court, Nassau County, dated February 26, 1971, affirmed, without costs. No opinion.

HOPKINS, Acting P.J., and GULOTTA, CHRIST, BRENNAN and BENJAMIN, JJ., concur.

Memorandum Decision of Justice Velsor

SUPREME COURT

NASSAU COUNTY, SPECIAL TERM I

Index No. 4267/70. Motion Cal. No. 50 (8/26/70).

By Velsor J.

Dated: September 15, 1970.

(Same Title)

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the Civil Service
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FRANCIS B. LOONEY, Commissioner of
Police of the County of Nassau
Police Headquarters,
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In this proceeding pursuant to Article 78 of the CPLR judgment is GRANTED in favor of the respondents dismissing the petition.

The petitioner is a member of the Police Department of the County of Nassau. He alleges that the Civil Service

Commission of Nassau County was arbitrary and committed an illegal act in adopting two resolutions in December 1969 whereby candidates for promotion to Captain, effective January 1, 1973, and to Lieutenant and Sergeant, effective January 1, 1974 would be required to show successful completion of two years of college. It is alleged further that the "order goes contrary to Rule 28 of the Civil Service Law of the State of New York" (paragraph "8" of petition) and that "to impose this requirement [two years of college] on current members of the department who enlisted with the understanding that no college educational requirements were necessary for promotion would be arbitrary...".

The Rules and Regulations of the Department of Civil Service of the State of New York do not contain a "Rule 28" as alleged in paragraph "8" of the petition pertaining to promotions as set forth in McKinney's Consolidated Laws Vol. 9 at page 461. Rule 28 is concerned with the "effect of temporary appointment on eligibility for permanent appointment".

That rule is renumbered as §4.9 in the 1969-70 supplement (p. 160) to the same Vol. 9 (See also 4 NY C R R 4.9). Accordingly it must be held that the resolutions changing the qualifications for promotion do not violate "Rule 28".

A similar contention as that raised by the petitioner herein was raised and rejected in Mtr. of Moss v. Dept. Civ. Serv., 55 Misc. 2d 653 with Justice Harry B. Frank writing at page 656 "The claim and contention of petitioner that he had the right to participate in the promotion examination on the basis of the minimum educational prerequisites in effect when he entered into permanent employ in 1960 cannot be sustained (see Colasurdo v. Stanley, 28 A. D. 2d 959)". The Record on Appeal in Colasurdo v. Stanley, supra, reveals that Mr. Justice Frank S. McCullough on June 15, 1966 in an opinion dismissing the original

complaint wrote in part "No authority has been submitted to the Court, nor does the Court know of any authority for the proposition that once a person is declared eligible to take an examination for a Civil Service position, he must always thereafter be deemed eligible to take subsequent examinations for the same position". (Brief of Respondents, Appendix A, page 17).

In Mtr. of Crowley v. Milone, 55 Misc. 2d 660, aff'd. 31 A. D. 2d 928, the petitioners urged that the eligibility requirements for a promotion examination could not be reduced so that probation officers with less experience and training would be eligible; but Mr. Justice Daniel G. Albert at Special Term held adversely to the petitioners and was affirmed on appeal by the Appellate Division Second Department.

The respondents papers show: that the resolutions of the Civil Service Commission were made after a recommendation was made by the Commissioner of the Nassau County Police Department concerning the need in police work for supervisory personnel to have advanced education; and that the Police Department has made available to its personnel a tuition free two year college program at Nassau County Community College. In view of those facts and the fact that ample notice has been given to incumbent policemen who will not be otherwise eligible to take promotion examinations before 1973 (Captain) or 1974 (Lieutenant and Sergeant) to acquire the advance education, it may not be held that the change in the eligibility requirements, effective January 1973 and January 1974 was unreasonably or arbitrarily made. As stated by the Court of Appeals in Matter of Wirzberger v. Watson, 305 N.Y. 507, 513, "The decisional law on the problem, is that the Commissioner's fixing of the minimum requirements for admission to an examination is not to be interfered with by the Courts if any fair argument can be made to sustain

its action . . . even though they may differ from the commission as to its advisability." The petitioner has offered no argument whatsoever to contradict the recommendation of the Commissioner of the Nassau County Police Department that supervisory personnel be better educated to cope with the many problems facing law enforcement officers today.

Submit judgment on notice.

J. S. C.

Nassau County Civil Service Commission Resolution No. 41

"RESOLVED that the qualification requirements to participate in promotion examinations for the rank of Sergeant and Lieutenant in the Nassau County Police Department, held after January 1, 1974, be amended to require the successful completion of two years of college."

Nassau County Civil Service Commission Resolution No. 435

"RESOLVED that in accordance with the decision of the Nassau County Civil Service Commission on December 19, 1969 the qualification requirements to participate in promotion examination for Captain held after January 1, 1973 be amended to require the successful completion of two years of college."

Amendment V of the United States Constitution

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property by taken for public use without just compensation.